

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

February 15, 2005 Hearing Room 357

8:30 A.M. Tapes 13 - 15

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

GUEST MEMBER: Rep. Wayne Krieger

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES HEARD: HB 2231 – Public Hearing and Work Session

HB 2232 – Public Hearing

HB 2233 – Public Hearing

HB 2337 – Public Hearing

SB 40 – Public Hearing

SB 204 – Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 13, A		
003	Chair Barker	Calls the meeting to order at 8:37 a.m.
008	Attorney General Hardy Myers	Attorney General of Oregon. Gives background for bills introduced by the task force on restitution reform. Discusses the change in restitution in Oregon.
038	Attorney General Myers	Explains need for accountability in recovering restitution.
054	Chair Barker	Opens public hearing on HB 2231, which prohibits setting aside adult conviction or expunging juvenile record if unsatisfied

HB 2231 – PUBLIC HEARING

068	Connie Gallagher	Administrator, Crime Victims' Assistance Section, Department of Justice. Submits written testimony and testifies in support of HB 2231 (EXHIBIT A).
095	Frederick M. Boss	Assistant Attorney General, Chief Counsel, Oregon Civil Enforcement Division, Department of Justice. Submits written testimony and testifies in support of HB 2231 (EXHIBIT B).
109	Rep. Thatcher	Asks if restitution must be paid if it was ordered as a condition of probation and probation was revoked.
112	Boss	Explains that restitution should be paid even if probation is revoked.
117	Heidi Moawad	Counsel. Discusses her experience with restitution.
126	Boss	Explains that HB 2231 only applies to judgment of expungement, even if it has been referred to the Department of Revenue.
135	Walt Beglau	Oregon District Attorneys Association. Testifies in support of HB 2231.
163	Gallagher	Relays support of Crime Victims United on HB 2231.

175	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2231.
209	Skye	Discusses an offender's need to expunge their record.
243	Skye	Continues to illustrate the potential negative effects of HB 2231.
283	Skye	Explains why HB 2231 will prevent only poor people from receiving expungement.
358	Chair Barker	Asks if a criminal could claim that a crime were never committed if their record were expunged.
367	Skye	Answers that the conviction is separate from the judgment, and even when a conviction is expunged, the judgment can still exist.

TAPE 14, A

002	Rep. Macpherson	Comments that the existence of the judgment is not affected by expungement. Asks if it is discretionary for the court to expunge the record if there is outstanding restitution.
010	Skye	Explains the process of serving notice and the court's obligation to follow the statutory process for expungement.
026	Rep. Macpherson	Asks about the change in sentencing regarding ability to pay.
034	Skye	Discusses ability to pay, and compliance required for expungement.
058	Chair Barker	Asks if HB 2231 might encourage offender to make paying their restitution a priority.
063	Skye	Explains that HB 2231 will negatively affect only the poor.
087	Chair Barker	Closes public hearing and opens a work session on HB 2231.

HB 2231 – WORK SESSION

- 089 Rep. Olson **MOTION: Moves HB 2231 to the full committee with a DO PASS recommendation.**
- VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 092 Chair Barker **The motion CARRIES.**
- REP. BARKER will lead discussion in the full committee.**
- 095 Chair Barker Closes work session on HB 2231. Opens public hearing on HB 2232.

HB 2232 – PUBLIC HEARING

- 108 Connie Gallagher Administrator, Crime Victims’ Assistance Section, Department of Justice. Submits written testimony and testifies in support of HB 2232 **(EXHIBIT C)**.
- 132 Frederick M. Boss Assistant Attorney General, Chief Counsel, Oregon Civil Enforcement Division, Department of Justice. Submits written testimony and testifies in support of HB 2232 **(EXHIBIT D)**.
- 153 Rep. Macpherson Asks if there is any reason to expect that the collection experience would be different for the mentally ill than for the general population.
- 160 Boss Believes there would be no difference in the collection experience.
- 169 Chair Barker Expresses concern about the term “conviction.”
- 177 Boss Explains intent to focus on the process for assessing restitution.
- 188 Heidi Moawad Counsel. Asks if it is possible to change “conviction” to another word.
- 194 Boss Answers that another word might accomplish the goal, but the ability to collect flows from the judgment itself.
- 201 Moawad Asks about other possible changes.

206	Boss	Expresses intent to obtain a judgment in order to enforce restitution.
212	Walt Beglau	Oregon District Attorneys Association. Testifies in support of HB 2232.
246	Michael Morris	Office of Mental Health and Addiction Services, Department of Human Services. Testifies in opposition to HB 2232.
275	Mary Claire Buckley	Psychiatric Security Review Board. Testifies in opposition to HB 2232. Explains the need to treat those with mental illness differently from the general population of offenders.
320	Buckley	Explains unintended consequences that may occur due to HB 2232.
370	Buckley	Addresses the many indigent people that HB 2232 would affect negatively.
400	Chair Barker	Asks why the victim should not receive their restitution even though the offender is mentally ill.

TAPE 13, B

001	Buckley	Expresses that her highest concern is calling this a “conviction.”
021	Kelly Skye	Oregon Criminal Defense Lawyers Association. Submits written testimony in opposition to HB 2232 (EXHIBIT E). Expresses agreement with Ms. Buckley.
029	Rep. Macpherson	Requests a comparison of someone released from prison and someone released from the mental hospital.
046	Morris	Explains differences between the release of offenders from prison and from a mental institution.
063	Rep. Macpherson	Asks when the fiscal analysis will be ready.
064	Morris	Reports that it will be ready at the end of the week.
067	Rep. Macpherson	Asks for distinction between general offender and insanity defense. Asks if insanity defense would be encouraged by HB 2232.

081	Skye	Relays her experience that the decision is made on where the offender would be most effectively treated.
120	Bob Joondeph	Executive Director, Oregon Advocacy Center. Testifies in opposition to HB 2232.
148	Joondeph	Describes the policy behind restitution and the reason for an insanity defense.
201	Joondeph	Points out that someone released from a mental institution is required to pay for their own living expenses outside the institution.
215	Terrie Quinteros	Program Director, Crime Survivors for Community Safety. Submits written testimony and testifies in opposition to HB 2232 (EXHIBIT F). Notes the increased risk for homelessness.
234	Harris Matarazzo	Attorney at Law. Testifies in opposition to HB 2232.
264	Chair Barker	Closes public hearing on HB 2232. Asks counsel to look at language. Requests the fiscal impact statement before moving on.
272	Chair Barker	Opens public hearing on HB 2233.

HB 2233 – PUBLIC HEARING

280	Connie Gallagher	Administrator, Crime Victims' Assistance Section, Department of Justice. Submits written testimony and testifies in support of HB 2233 (EXHIBIT G). Mentions that Crime Victims United supports this bill.
307	Frederick M. Boss	Assistant Attorney General, Chief Counsel, Oregon Civil Enforcement Division, Department of Justice (DOJ). Submits written testimony and testifies in support of HB 2233 (EXHIBIT H).
330	Walt Beglau	Oregon District Attorneys Association. Testifies in support of HB 2233.
337	Rep. Macpherson	Asks Mr. Boss what rate of interest applies to restitution judgment.
344	Boss	Answers that there is a nine percent rate of interest after July 1, 2007.

356 Rep. Macpherson Asks if rates could be adjusted to reflect market rates.

364 Boss Admits that HB 2233 is not written to make adjustment for market rate.

374 Rep. Macpherson Comments about the theory of restitution.

TAPE 14, B

009 Rep. Macpherson Urges group to quantify amount if the interest will accrue for 30 more years under HB 2233.

020 Terrie Quinteros Program Director, Crime Survivors for Community Safety. Testifies in support of HB 2233.

031 Chair Barker Closes public hearing on HB 2233. Asks counsel and Rep. Macpherson to work with DOJ in regard to interest.

036 Chair Barker Opens public hearing on HB 2337.

HB 2337 – PUBLIC HEARING

038 Rep. Krummel House District 26. Testifies in support of HB 2337. Explains the background of the bill.

088 Rep. Krummel Offers to work on amendments if the committee members wish.

094 Terry McDonald Constituent, Rep. Krummel. Testifies in support of HB 2337.

132 Chair Barker Asks what kind of financial return HB 2337 would have.

134 Rep. Krummel Answers that he has not spoken with Legislative Revenue.

141 Rep. Thatcher Asks if HB 2337 will speed up the process of expungement.

143 Rep. Krummel Expresses hope that the process would quicken.

145	McDonald	Believes the process will quicken. Notes that contractors can be used to assist in processing.
182	Rep. Chip Shields	House District 43. Expresses concerns with HB 2337, and suggests amendment to the \$500 fee.
213	Kelly Skye	Oregon Criminal Defense Lawyers Association. Submits written testimony and testifies in opposition to HB 2337 (EXHIBIT I).
269	Skye	Suggests giving court ability to waive or reduce the fee for expungement for lower level offenses.
275	Chair Barker	Asks how many applicants there are annually.
277	Skye	Answers that she does not know.
279	Heidi Moawad	Counsel. Admits that she does not know either.
283	Robert Reynolds	Citizen, Multnomah County. Submits written testimony and testifies in opposition to HB 2337 (EXHIBIT J).
325	Reynolds	Suggests that such a large fee for expungement is further punishment.
359	Chair Barker	Closes public hearing on HB 2337. Asks Rep. Krummel for a fiscal statement.
369	Chair Barker	Opens public hearing on SB 40.

SB 40 – PUBLIC HEARING

372	Heidi Moawad	Counsel. Shares concern on behalf of Craig Prins regarding fiscal impact.
386	Mary Claire Buckley	Psychiatric Security Review Board. Testifies in support of SB 40. Explains background of SB 40.

TAPE 15, A

015	Michael Morris	
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Department of Human Services, Mental Health Policy Manager, Office of Mental Health and Addiction Services. Testifies in support of SB 40.

- 028 Harris Matarazzo Attorney. Submits written testimony and testifies in opposition to SB 40 (**EXHIBIT K**).
- 084 Matarazzo Discusses term “paraphilia” within SB 40, and more appropriate terms.
- 127 Matarazzo Continues discussion of terms, and fluctuating definitions.
- 168 Chair Barker Asks Mr. Matarazzo to contact Joe O’Leary, Judiciary Committee Counsel, to clarify terms.
- 175 Chair Barker Closes public hearing on SB 40. Opens public hearing on SB 204.

SB 204 – PUBLIC HEARING

- 180 Daina Vitols Assistant Attorney General. Submits written testimony and testifies in support of SB 204 (**EXHIBIT L**).
- 190 Chair Barker Closes public hearing and opens a work session on SB 204.

SB 204 – WORK SESSION

- 191 Rep. Macpherson **MOTION: Moves SB 204 to the full committee with a DO PASS recommendation.**
- VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 196 Chair Barker **The motion CARRIES.**
- REP. MACPHERSON will lead discussion in the full committee.**
- 197 Chair Barker Closes work session on SB 204. Adjourns the meeting at 10:45 a.m.

EXHIBIT SUMMARY

- A. **HB 2231, written testimony, Connie Gallagher, 1 p**
- B. **HB 2231, written testimony, Frederick M. Boss, 1 p**
- C. **HB 2232, written testimony, Connie Gallagher, 1 p**
- D. **HB 2232, written testimony, Frederick M. Boss, 1 p**
- E. **HB 2232, written testimony, Kelly Skye, 2 pp**
- F. **HB 2232, written testimony, Terrie Quinteros, 1 p**
- G. **HB 2233, written testimony, Connie Gallagher, 1 p**
- H. **HB 2233, written testimony, Frederick M. Boss, 1 p**
- I. **HB 2337, written testimony, Kelly Skye, 1 p**
- J. **HB 2337, written testimony, Robert Reynolds, 1 p**
- K. **SB 40, written testimony, Harris S. Matarazzo, 5 pp**
- L. **SB 204, written testimony, Daina A. Vitolins, 1 p**